

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
JAMES L. RIGBY dba  
NORTHWEST LANDSCAPE COMPANY,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 85-221

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter, the appeal of a notice and order of civil penalty for causing or allowing an unlawful outdoor fire containing some prohibited materials, came on for hearing before the Pollution Control Hearings Board; Lawrence J. Faulk, Wick Dufford and Gayle Rothrock (presiding); on December 13, 1985, at Seattle, Washington. Respondent public agency elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared as company owner and represented himself. Respondent appeared and was represented by Keith D. McGoffin, its attorney. Court reporter Lynn Tarry of Calmes and Associates recorded

1 the proceedings.

2 Witnesses were sworn and testified. Exhibits were admitted and  
3 examined. Argument was heard. From the testimony, evidence, and  
4 argument, the Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent agency PSAPCA has filed with the Board a certified copy  
8 of its Regulations I and II, of which we take official notice.

9 II

10 Respondent PSAPCA is an activated air pollution control authority  
11 covering a five-county area which is empowered to implement the  
12 provisions of the Washington State Clean Air Act and its own code of  
13 regulations.

14 III

15 Appellant has been a nurseryman and landscape advisor and,  
16 recently, a salvager and recycler of railroad ties on four acres of  
17 property he owns in Everett. The nursery business operation has been  
18 both wholesale and retail. There is a camper-trailer on site, used as  
19 business headquarters, but no private residence exists there.

20 Periodically, appellant burns brush, pruned tree limbs and  
21 branches, and stumps which are residuals of his nursery operation. He  
22 testified that he has obtained burning permits for these burns in the  
23 past.

24 IV

25 On July 1, 1985, at 2:15 p.m. a suspicious outdoor fire billowing

1 visible black smoke and flames on appellant's business property was  
2 reported to PSAPCA by the Snohomish County Fire Marshall's office.  
3 Thereafter fire fighters were sent to the scene to extinguish the  
4 blaze.

5 A PSAPCA inspector arrived to observe the fire scene and noticed  
6 fire fighters battling flames on a fire pile somewhere between 15 feet  
7 and 35 feet in diameter and five feet high, which fire had railroad  
8 ties, tree stumps and some brush in it. He observed the fire fighters  
9 use 3,000 gallons of water to extinguish the blaze. The fire fighters  
10 filed a fire incident report.

11 V

12 The inspector conversed with appellant Rigby about his belief he  
13 held a proper burning permit. Rigby declared that he first had a  
14 modest fire that suddenly got into the large nearby pile of railroad  
15 ties. He said he began with a four-foot by four-foot brush pile  
16 pushed up by a "Bobcat" tractor which got away from his control when a  
17 wind came up. Appellant later testified that the purpose of the fire  
18 was to clear an area to establish a baseball field for his Boy Scout  
19 troop.

20 VI

21 Appellant Rigby's burning permit issued by Fire District 11 was  
22 for residential burning, but as noted, there was no residence on the  
23 property. Appellant did not hold a current Population Density  
24 Verification from PSAPCA, necessary for proceeding with a land  
25 clearing fire. Appellant asserted he had a "density verification

1 slip" a few years ago (1981) but never had it renewed. Moreover,  
2 appellant had no permission of any kind from PSAPCA's control officer  
3 for any other kind of burning.

#### 4 VII

5 The inspector notified appellant he would be receiving notices of  
6 violation from PSAPCA for violation of its regulations, which notices  
7 were issued July 2, 1985, and promptly mailed to appellant. Appellant  
8 was charged with violations of Regulation I, Section 8.02(3), 8.05(1),  
9 and 8.06(3).

#### 10 VIII

11 On October 28, 1985, PSAPCA issued a formal Notice and Order of  
12 Civil Penalty No. 6334 with a citation of violations of Regulation I,  
13 Section 8.02(3) and 8.05(1) and levying an associated \$1,000 penalty.  
14 Appellant received the notice and decided to appeal the matter, asking  
15 for relief.

16 On November 8, 1985, appellant made application for relief to the  
17 Board and the matter became our cause number PCHB 85-221.

#### 18 IX

19 Any Conclusion of Law which is deemed a Finding of Fact is hereby  
20 adopted as such.

21 From these Findings of Fact the Board comes to these

#### 22 CONCLUSIONS OF LAW

#### 23 I

24 The Board has jurisdiction over these persons and these matters.  
25 Chapters 43.21B and 70.94 RCW.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
PCHB No. 85-221

II

The Legislature of the State of Washington has enacted the following policy on outdoor fires:

It is the policy of the state to achieve and maintain high levels of air quality and to this end to minimize to the greatest extent reasonably possible the burning of outdoor fires. Consistent with this policy, the legislature declares that such fires should be allowed only on a limited basis under strict regulation and close control. RCW 70.94.740.

Respondent has adopted its Regulation I, Section 8, which provides in pertinent part:

It shall be unlawful for any person to cause or allow any outdoor fire other than land clearing burning or residential burning except under the following conditions:

(1) Prior written approval has been issued by the Control Officer or Board.  
[Section 8.05(1)]

The fire at issue does not meet the definition of residential burning. Regulation I, Section 1.07 (pp). It was not burned of material "originating on lands immediately adjacent and in close proximity to a human dwelling." Moreover, it was not limited to leaves, clippings, prunings and untreated wood. It also fails to meet the definition of land clearing burning. Regulation I, Section 1.07(y). It was not limited to vegetation originating on the land where burned and no valid Population Density Verification was in effect. Regulation I, Section 8.06(3). Therefore, lacking a permit from PSAPCA for "other" burning, appellant violated Regulation I, Section 8.05(1).

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III

Regulation I, Section 8 also provides for limitations on types of material which may be lawfully burned. Specifically,

It shall be unlawful for any person to cause or allow any outdoor fire:

(3) containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics or any substance other than natural vegetation which normally emits dense smoke or obnoxious odors [Regulation I, Section 8.02(3)].

The fire ignited and maintained by Rigby emitted dense black smoke from burning a quantity of creosoted railroad ties which became involved in the fire in violation of Regulation I, Section 8.02(3).

IV

Appellant Rigby did make a perfunctory effort by securing an inappropriate burning permit from the local fire district. However, he mistakenly relied on outdated notions about being in compliance with air pollution control laws. He is now aware of burning regulations and, furthermore, is laboring with a marginal business operation. He is not in a business which presents a substantial risk of further burns of creosoted railroad ties, and we are persuaded that this experience has so affected him as to make any repetition highly unlikely. Part of the civil penalty levied should be suspended on condition he not violate air pollution control laws in the future.

V

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law the Board enters this

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
PCHB No. 85-221

ORDER


Notice and Order of Civil Penalty No. 6334 is affirmed; provided, however, that \$500 of the penalty is suspended if appellant does not violate respondent agency's regulations for a period of one year from the date of issuance of this Order.

DONE this 31st day of December, 1985.

POLLUTION CONTROL HEARINGS BOARD

  
GAYDE ROTHROCK, Vice Chairman

  
LAWRENCE J. BAULK, Chairman

  
WICK DUFFORD, Lawyer Member